

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States <i>ex rel.</i> Kevin	:	
McDonough,	:	
	:	Civil Action 2:08-cv-0114
Plaintiff	:	
	:	Judge Marbley
v.	:	
	:	Magistrate Judge Abel
Symphony Diagnostic Services and	:	
Symphony Diagnostic Services No. 1,	:	
d/b/a Mobilex U.S.A.,	:	
	:	
Defendants	:	
	:	

Discovery Dispute Conference Order

On June 3, 2013, counsel for the parties participated in a telephone discovery dispute conference with the Magistrate Judge.

The parties have resolved their dispute regarding Plaintiff's Third Set of Requests for Production of Documents No. 3. They are still discussing Requests for Production Nos. 1 and 2. Mobilex produced data last week that plaintiff's counsel's IT specialist has just begun to include in a data base. Once a spreadsheet is generated, plaintiff's counsel will be in a position to determine whether it yields the functional equivalent of the information sought through Requests Nos. 1 and 2.

The discovery dispute conference is RE-SET for Thursday, June 6 at 3:30 p.m. Counsel will advise me before then if the dispute is resolved. If not, they will provide me with any additional information relevant to resolution of the dispute by noon on June 6.

Diana Gomez deposition. Ms. Gomez is Mobilex's former comptroller. She now

works for a hospital in Charlottesville. Defendants' counsel have twice facilitated the scheduling her deposition, but plaintiff's counsel twice canceled it.

The deposition was first notice for March 2013. It was noticed a second time for May 14. Plaintiff's counsel sought some additional documents just a few days before the deposition and agreed to proceed with the deposition if they were produced. Mobilex produced the documents, but plaintiff's counsel canceled the deposition on very short notice. Ms. Gomez lost 1-2 vacation days as a result.

Plaintiff's counsel canceled the deposition because they feared the documents did not provide sufficient information regarding cost center data for Ms. Gomez's deposition to be completed on May 14. I don't question plaintiff's counsel's good faith in postponing the deposition, but improvidently or not they entered an agreement to proceed with it if the documents were produced. Canceling the deposition eroded the protections Rule 45 accords non-party witnesses. Rule 45(c)(1), Fed. R. Civ. P.

Nonetheless, Ms. Gomez is a witness whose deposition plaintiff is entitled to take, and as Mobilex's former comptroller she is obliged to provide discovery regarding the issues in dispute in this lawsuit. It is ORDERED that plaintiff's counsel consult with defendants' counsel about a Rule 45 notice of deposition for Ms. Gomez. The deposition should be scheduled for a date that works best for her. If Ms. Gomez lost a vacation day(s) as a result of the cancellation of the May 14 deposition, plaintiff must reimburse her for her loss. Plaintiff's counsel owes Ms. Gomez an apology for the late cancellation and any

assistance she may request with explaining the circumstances of the cancellation and rescheduling of the deposition to her employer.

s/Mark R. Abel
United States Magistrate Judge